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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------------------|-------------|----------------------|---------------------|------------------|
| 09/606,779 | 06/28/2000 | John H. Griffin | SCRIP1180-3 | 1406 |
| 28213 | 7590 | 11/25/2003 | EXAMINER | |
| GRAY CARY WARE & FREIDENRICH LLP | | | SAUNDERS, DAVID A | |
| 4365 EXECUTIVE DRIVE | | | ART UNIT | |
| SUITE 1100 | | | PAPER NUMBER | |
| SAN DIEGO, CA 92121-2133 | | | 1644 | |

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
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Washington, D.C. 20231

| SERIAL NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
|---------------|-------------|-----------------------|---------------------|
| 606,779 | | GRIFFIN | |

| EXAMINER | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
| | |

DATE MAILED:

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☒ is extended to run _____ or continues to run 3 MOS from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 9/5/03, has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☒ The proposed amendments to the claim and /or specification will not be entered and the final rejection stands because:
- a. ☒ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
 - b. ☒ They raise new issues that would require further consideration and/or search. (See Note).
 - c. ☒ They raise the issue of new matter. (See Note).
 - d. ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - e. ☒ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: SEE ATTACHED.

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing an appeal, the proposed amendment ☐ will be entered ☒ will not be entered and the status of the claims will be as follows:

Claims allowed: _____

Claims objected to: _____

Claims rejected: 2-15

However;

☐ Applicant's response has overcome the following rejection(s): _____

4. ☐ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because _____

5. ☒ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented. SEE ATTACHED.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☒ Other SEE ATTACHED RE IDS.

Presentation of new claims 16-22 is inappropriate prosecution after final, since additional claims are added and since each new claim would require examination for new matter and for anticipation by cited reference(s) of record.

There is no good reason applicant did not earlier present exhibit material that had overcome the cited Sun et al reference in related applications.

The information disclosure statement filed 9/5/03 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered. Indeed it is considered impossible for applicant to present such a statement, because at least one author of the listed Griffin et al reference is an inventor. Applicant was aware of this reference, and there is no good reason for failure to not earlier submit it.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Saunders, PhD whose telephone number is 703-308-3976. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan, can be reached at 703-308-3976. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

David A Saunders
DAVID SAUNDERS
PRIMARY EXAMINER
ART UNIT ~~182~~ 1644

Typed 11/22/03 DAS